Twenty-first Annual Report 1991/92

Manitoba
Law Reform
Commission

Manitoba

Law Reform Commission

Commission de réforme du droit

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TWENTY-FIRST ANNUAL REPORT

1991-1992

March 31, 1992

92-07374/

The Manitoba Law Reform Commission was established by *The Law Reform Commission Act* in 1970 and began functioning in 1971.

Commissioners:

Clifford H.C. Edwards, Q.C., *President*
John C. Irvine
Hon. Mr. Justice Gerald O. Jewers
Eleanor R. Dawson, Q.C.
Hon. Pearl K. McGonigal

Executive Director:

Jeffrey A. Schnoor

Legal Counsel:

Iris Allen
Karen Beauchamp
Susan Billinkoff
Harold Dick
Debra Hathaway
Barbara Hendrickson

Administrator:

Suzanne Pelletier

The Commission offices are located on the 12th floor of the Woodsworth Building, 405 Broadway, Winnipeg, Manitoba R3C 3L6. Tel. (204) 945-2896, Fax (204) 948-2184.

The Manitoba Law Reform Commission is an agency of and is primarily funded by the Government of Manitoba.

Additional funding is received from The Manitoba Law Foundation.

Some of the Commission's earlier Reports are no longer in print. Those that are still in print may be ordered from the Publications Branch, Office of the Queen's Printer, 200 Vaughan Street, Winnipeg, Manitoba R3C 1T5.

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A. THE COMMISSION'S MANDATE

The Manitoba Law Reform Commission was established by *The Law Reform Commission Act*. Royal assent was accorded to the Act on July 21, 1970 and it came into force on October 1, 1970. This Act was replaced by a new statute which came into force on March 8, 1990 (the Act is reproduced in Appendix A). The Commission's duties, as set out in section 6 of the Act, are to inquire into and consider any matter relating to law in Manitoba with a view to making recommendations for the improvement, modernization and reform of law, including:

a) the removal of provisions which are outdated or inconsistent,

b) the maintenance and improvement of the administration of justice,

c) the review of judicial and quasi-judicial procedures under any Act, and

d) the development of new approaches to and new concepts of law in keeping with and responsive to the changing needs of society and of individual members of society.

The recommendations of the Commission are made to the Minister of Justice and Attorney General and are then made publicly available through the publication of our Reports. The decision whether to proceed with these recommendations by introducing legislation in the Legislature then rests with the Minister and his or her Cabinet colleagues. As noted later in this Annual Report, our rate of success in achieving this implementation has been very gratifying.

Although references from the Minister must be given priority, the Commission also receives suggestions for projects from various sources, including judges, law professors, lawyers, interest groups and members of the public. We are grateful for all suggestions and encourage anyone interested in law reform to point out to us areas which they encounter which they believe require review. Although our limited resources do not permit us to take on every matter which is referred to us, anyone suggesting a topic can be assured that it will receive careful consideration.

B. THE COMMISSION'S ACHIEVEMENTS

Since its inception in 1970, the Commission has issued 110 reports covering a very wide range of areas of the law. Approximately eighty percent (80%) of these Reports have been implemented by the provincial Legislature, representing an enormous contribution to the development of the laws of this Province. Appendix C contains a full list of our Reports, together with details of implementation.

Consider the following statutes which had their origin in Reports of the Commission: *The Provincial Court Act* (selection of judges by independent committee); *The Human Tissue Act* (organ transplants); *The Domicile and Habitual Residence Act*; *The Survivorship Act*; *The Occupiers' Liability Act*; *The Builders' Liens Act*; *The Powers of Attorney Act*. The role of the Commission in the area of family law has been especially significant; Reports of the Commission have been implemented through the enactment of *The Dependants Relief Act*, *The Intestate Succession Act*, *The Marital Property Act* and *The Family Maintenance Act*.

As well, recommendations of the Manitoba Law Reform Commission resulted in the amalgamation of the Court of Queen's Bench and the County Courts, the introduction of prejudgment interest, the adoption of a definition of death and the abolition of many outdated common law rules, such as interspousal immunity in tort, the rule against perpetuities and the

law making oral contracts respecting land unenforceable. These, of course, are only examples of a much larger body of work.

We are pleased that the Manitoba Law Reform Commission has been one of the most effective law reform bodies in the Commonwealth, as measured by its impact on the laws of the province. We believe that we have achieved this by recommending reforms which are practical, progressive, well-researched and thoughtfully considered; the independence of the Commission has been the cornerstone of the credibility of its recommendations. In the coming year, we shall continue to strive to maintain our history of achievement.

C. THE YEAR IN REVIEW

1. Reports Issued

During the past year, the Commission issued three major Reports. No Discussion Papers were published. The following summarizes this year's Reports. Executive Summaries of the Reports, providing further detail, are set out in Appendix B.

#74 - Self-Determination in Health Care (Living Wills and Health Care Proxies) - June 1991

The Manitoba Law Reform Commission's Report on *Self-Determination in Health Care (Living Wills and Health Care Proxies)* proposes a new method for the expression of wishes respecting health care: the health care directive. This new method would allow competent individuals to determine in advance the medical treatment to be administered to themselves should they later lose the capacity to make health care decisions. It would also allow them to appoint another person to make health care decisions on their behalf after they have lost the capacity to make those decisions themselves. The Report discusses why such a mechanism is needed, how it could be used, its effect and the details of implementation.

#75 - The Independence of Justices of the Peace and Magistrates - August 1991

The Manitoba Law Reform Commission's Report on *The Independence of Justices of the Peace and Magistrates* proposes major reforms aimed at ensuring the independence and impartiality of justices of the peace and maintaining public confidence in that office. It completes the project referred to the Manitoba Law Reform Commission by the Minister of Justice and Attorney General, James C. McCrae, that has already resulted in the Commission's 1989 Report entitled *The Independence of Provincial Judges*.

#76 - Sterilization and Legal Incompetence - January 1992

The Manitoba Law Reform Commission's Report on *Sterilization and Legal Incompetence* explores the two irreconcilable positions emanating from the complex issue of whether legally incompetent people should ever have access to or be subject to non-therapeutic sterilization when they do not have the legal capacity to choose this procedure personally by consenting.

2. Current Projects

(a) The Trustee Act and the Law of Trusts

In the coming year, the Commission expects to publish two Reports on the law relating to *The Trustee Act* and the Law of Trusts. The first will deal with the validity of non-charitable purpose trusts (at present, the law places several obstacles to the validity of such trusts). The second Report will deal with the propriety of trustees considering ethical issues in determining a trust's investments.

The research for this project is being funded by a grant from The Manitoba Law Foundation.

(b) Professional and Occupational Associations

On November 8, 1990, the Hon. James C. McCrae, Minister of Justice and Attorney General, requested that the Commission consider the issue of professional and occupational associations and the role and responsibility of the provincial government regarding the governing of such associations and occupations. The terms of reference of the project are extensive:

- the effectiveness of the present system within Manitoba for the governing of professional and occupational associations, with reference to the policies and practices of the other Canadian provinces;
- the extent to which the Provincial Government should delegate governing authority to the professional and occupational associations, including the criteria by which self-governing status should be conferred on professions and occupations;
- the necessity of a structure within government to deal with issues pertaining to the governing of professional associations and the nature of that structure;
- the advisability of enacting general legislation regarding the governing of all occupational and professional associations and the proposed provisions of any legislation recommended;
- the advisability of permitting incorporation of professionals; and
- any other matter which would assist the government in determining an effective policy for the governing of professional and occupational associations.

This is one of the largest projects which the Commission has ever undertaken, both because of the scope of the research which is required and the complexity of the issues involved. Nonetheless, we expect to publish a Discussion Paper during the coming year.

(c) Animal Protection and Control

This is the second of the projects for which research is being funded by a grant from The Manitoba Law Foundation.

We have divided this project into two phases. The first might be dubbed 'Protection from Animals' and deals primarily with liability for injury or damage done by animals; the related issue of stray animals will also be considered. The second phase of the project might be dubbed 'Protection of Animals' and will deal with the adequacy of certain parts of Manitoba's animal protection legislation; of necessity, the time limited nature of our grant from the Law Foundation will narrow the potentially enormous scope of such an inquiry.

We expect that Reports resulting from this project will be published in the coming year.

(d) Land Titles Registration System

As we indicated in last year's Annual Report, a Discussion Paper was issued in January 1991 indicating that the Commission had made a tentative decision to endorse a new Model Land Recording and Registration Act; the Model Act had been prepared by a Joint Committee representing Alberta, British Columbia, Manitoba, the Council of Maritime Premiers, Northwest Territories, Ontario, Saskatchewan and Yukon. Our representative on the Joint Committee is Prof. D. Trevor Anderson. Although the Commission felt that the enactment of the Model Act would clarify and improve the law of Manitoba and offer the further advantage of greater uniformity of law and practice in Canadian jurisdictions if it were widely adopted, the Commission issued the Discussion Paper in order to invite and encourage submissions from the practising Bar and other interested organizations and individuals.

The Joint Committee met again in February 1992 to review the Model Act further and it is in the process of considering some amendments. Once the Joint Committee has completed its deliberations, the Commission will be in a position to review the suitability of the Model Act for adoption in Manitoba. Therefore, it will likely be some time before a final Report can be submitted to the Minister on this very important issue.

(e) Non-residential Tenancies (Parts I, II and III of The Landlord and Tenant Act

After a period of deferral, work on this project has begun again. Work is proceeding in two areas: the remedy of distress and aspects of the law relating to covenants. Because of the size of this project and the limited resources which can be devoted to it, we expect that we will be working on this project for some time. Nonetheless, we plan to issue the first of a series of Reports on this topic in the coming year.

(f) Apportionment of Liability

During the course of our work on Animal Protection and Control (and, in particular, on the common law tort of scienter), it came to our attention that *The Tortfeasors and Contributory Negligence Act* of Manitoba may be out of step with similar legislation in other provinces in not permitting the apportionment of liability for torts other than negligence. Accordingly, this project was begun in order to examine the issue.

(g) Pre-contractual Statements

This project examines and evaluates the law relating to the remedies available to a contracting party who has been induced to enter into a contract on the basis of a false pre-contractual statement. The current law is extremely complex and confusing and frequently yields inconsistent results. Recently, a judge of the Manitoba Court of Appeal, in the case of *Ennis* v. *Klassen*,[1] drew attention to the unsatisfactory state of the law. Mr. Justice Twaddle stated: ". . . the entire subject of innocent misrepresentation as a cause of action should be reviewed in depth by the Law Reform Commission." This project responds to His Lordship's statement of concern.

(h) Contracts for the Benefit of Third Parties (Privity of Contract)

The doctrine of privity states that only persons who are parties to a contract may sue or be sued on it. The corollary to that proposition denies the enforceability of a promise to confer a benefit on a third party to the contract. In other words, if A and B enter into a contract for the purpose of benefitting C, C generally has no right to enforce the receipt of those benefits. Arguably, the failure of the law to provide a third party beneficiary with an enforceable right may defeat both the common intention of the parties to the contract and the reasonable expectations of the third party. This project will review the development of this rule and consider whether there is a need for reform.

(i) Wills and the Doctrine of Substantial Compliance

In 1980, the Manitoba Law Reform Commission recommended that *The Wills Act* be amended to permit courts to give effect to documents which were clearly intended to be wills, even if the strict formalities of *The Wills Act* had not been complied with.[2] This recommendation was implemented in 1983 with the enactment of section 23 of *The Wills Act*.[3] However, concern has been expressed that a recent decision of the Manitoba Court of Appeal[4] may have unduly restricted the discretion of the court. The Commission's project will examine this concern.

3. Implementation of Reports

No Reports of the Commission were implemented during the past year. However, the following Bills were introduced by the government in the current Session of the Manitoba Legislature. If enacted, they will give effect to several Reports of the Commission:

Bill 71 - The Retirement Plan Beneficiaries Act

- validates the designation of beneficiaries of Registered Retirement Savings Plans and Registered Retirement Income Funds which are made outside of a

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[1] *Ennis* v. *Klassen* [1990], 4 W.W.R. 609 (Man. C.A.).

[2] Manitoba Law Reform Commission, *Report on the Wills Act and the Doctrine of Substantial Compliance* (Report #43, 1980).

[3] *The Wills Act*, C.C.S.M. c. W150, s. 23.

[4] *Re Langseth Estate* (1990), 75 D.L.R. (4th) 25 (Man. C.A.).

will; at present, such designations are probably invalid (implements Report #73, 1990).

Bill 72 - The Law Reform (Miscellaneous Amendments) Act

- repeals *The Bulk Sales Act* (an ineffective statute overtaken by more recent remedies) (implements Report #71, 1988);

- repeals section 183 of *The Liquor Control Act* (this section imposed civil liability on innkeepers for serving intoxicated patrons who, as a result, come to their death after leaving the premises; no liability is imposed for non-fatal injuries and damages are limited to $1,500; the common law has since provided a better remedy without these limitations) (implements Report #15A, 1985);

- repeals the Rule in Shelley's Case (an ancient rule of interpretation which is obscure and illogical) (implements Report #62, 1985);

- repeals *The Wages Recovery Act* (rendered obsolete by *The Payment of Wages Act* and other statutes) (implements Report #17A, 1987);

- clarifies the law of waste (balancing the liability for damage to real property between life tenants and tenants for fixed terms and the person with the reversion) (implements Report #62, 1985);

- clarifies the law respecting debts settled by the payment of an amount less than that which was originally owed (implements Report #62, 1985).

As well, a private member's bill was introduced which would give effect to our Report on *Self-Determination in Health Care (Living Wills and Health Care Proxies)* (Report #74, 1991). We are also aware that the Government is actively studying this Report and we anticipate that a government bill giving effect to our recommendations will be introduced in the current Session of the Legislature.

D. OPERATIONAL OBSERVATIONS

1. The Commissioners

The Commission is composed of at least five and not more than seven Commissioners appointed by the Lieutenant Governor in Council on the recommendation of the Minister of Justice and Attorney General. The Act creating the Commission sets out the following requirements:

- at least one of the commissioners must be a judge of the Court of Queen's Bench;

- at least one of the commissioners must be a full-time member of the Faculty of Law of the University of Manitoba;

- at least one of the commissioners must be a lawyer who is not in the full-time employ of the Government of Manitoba or any agency thereof;

- at least one of the commissioners must be a non-lawyer.

Each Commissioner holds office for a term of three years during good behaviour. During the past year, the terms of two of our Commissioners (Gerald O. Jewers and John C. Irvine) expired and both were reappointed to further three year terms.

The members of the Commission are now as follows:

Commissioner	Affiliation	Term expires
Clifford H.C. Edwards	Dean Emeritus, Faculty of Law, University of Manitoba	May 16, 1992
John C. Irvine	Professor, Faculty of Law, University of Manitoba	May 16, 1994
Gerald O. Jewers	Justice, Court of Queen's Bench	May 16, 1994
Eleanor R. Dawson	Practising lawyer	May 16, 1992
Pearl K. McGonigal	Non-lawyer	May 16, 1993

Prof. C.H.C. Edwards is the President of the Commission.

The Commission held 23 meetings from April 1, 1991 to March 31, 1992. The minimum number of meetings required by *The Law Reform Commission Act* is 4 meetings annually.

2. Staff

The Law Reform Commission Act permits an Executive Director, and such lawyers, office staff and other employees as may be required for the Commission's purposes, to be employed under *The Civil Service Act*. During the past year, the Commission's permanent staff consisted of the following persons:

Name	Position
Iris C. Allen	Legal Counsel
Debra Hathaway	Legal Counsel
Barbara Hendrickson	Legal Counsel (effective September 1991)
Suzanne Pelletier	Administrator
Marilyn Pilon	Legal Counsel (resigned June, 1991)
Jeffrey A. Schnoor	Executive Director

The Law Reform Commission Act also allows the Commission to engage consultants to assist with specific projects. The amount of money available for this purpose ($20,000) is quite limited. Nonetheless, we have been fortunate in obtaining the services of a number of excellent consultants. Prof. D. Trevor Anderson of the Faculty of Law, University of Manitoba, has been our representative on the interprovincial committee carrying on the Land Titles Registration System project. Profession Philip H. Osborne, currently on sabbatical from the Faculty of Law, University of Manitoba, has been engaged to have primary responsibility for our projects on Pre-contractual Statements and Contracts for the Benefit of Third Parties (Privity of Contract). Susan Billinkoff has been engaged to take primary responsibility for the part of our Non-residential Tenancies project dealing with the remedy of distress. Professor Donovan W.M. Waters of the Faculty of Law, University of Victoria, has advised us from time to time on our project on *The Trustee Act* and the Law of Trusts and Shael Wilder, a Vancouver practitioner formerly of Winnipeg, has been engaged to assist us with the part of our Trusts project dealing with ethical investments. Our consulting budget also enabled us to engage Laurence Gillespie, a first year law student, during the summer. The Commission has hired at least one law student every summer since the mid-1970s and we believe that the experience has always been mutually beneficial.

Although our budget is appropriated to us by the provincial Legislature, we have also been fortunate in receiving grants from the Manitoba Law Foundation. These grants have enabled us to engage two consultants, Karen Beauchamp and Harold Dick, to work on our projects on the law of trusts and animal protection and control, respectively.

3. Finances

As an agency of the Government of Manitoba, the Commission's budget is appropriated by the Provincial Government and approved by the Legislature. For the 1991-92 fiscal year, the Commission's budget was approved at $390,800, an increase of $11,700 from the previous year. The increase was attributable solely to salary increments; the portion of our budget attributable to operating costs remained unchanged. In fact, our operating budget has remained static for a number of years. We have responded by focusing our efforts on achieving internal economies and doing more with less.

Once again, the Commission was also fortunate to receive two grants from the Manitoba Law Foundation in the amount of $34,000 each. The receipt of these grants has greatly expanded the scope of the work which the Commission is able to undertake.

4. Public Relations

An important priority of the Commission continues to be efforts to increase public awareness of our work. These efforts generally include giving interviews to the media, accepting speaking engagements, representing the Commission at conferences and receiving visitors from other jurisdictions interested in the work of the Commission.

In the past year, a major focus of our efforts was our Report on *Self-Determination in Health Care (Living Wills and Health Care Proxies)*, which received unparalleled attention from the print, radio and television media. In addition to giving interviews to the media, members of the Commission staff also spoke on the Report to a meeting of the Health Law Subsection of the Manitoba Bar Association, the Annual Conference of the Manitoba Hospice Association, Nursing Grand Rounds at the Health Sciences Centre of Winnipeg (Adult Psychiatric Services) and the Estate Planning Council of Manitoba. Indeed, interest in this project extended beyond the province. Members of the Commission staff were invited to speak to a seminar organized by

the Association des juristes d'expression française de la Saskatchewan as part of the Saskatchewan Bar Association's Mid-winter Meeting. As well, we were honoured with an invitation to speak on our Living Wills Report to the Annual Meeting of the Uniform Law Conference of Canada and to a meeting of the Federal, Provincial and Territorial Ministers of Justice of Canada; the subject of the latter talk also included our 1989 Report on *The Independence of Provincial Judges*. These were exceptional opportunities to disseminate throughout Canada the reform proposals of the Commission.

A further opportunity to disseminate the Commission's recommendations was afforded us when the Estates and Trusts Journal decided to reprint our Report on *Statutory Designations and The Retirement Plan Beneficiaries Act*.[5]

As in past years, members of the Commission's staff participated in Law Day, establishing an information booth at the open house held at Winnipeg's Court House.

The President of the Commission also accepted an invitation from a major Winnipeg law firm to speak on the work of the Commission.

Representatives of the Commission attended the Annual Meeting of the Federation of Law Reform Agencies of Canada at which time our President, Prof. Edwards, was elected Vice-President of the Federation. The Federation continues to be an important forum through which we cooperate with our fellow law reformers in other jurisdictions.

As always, the Commission continued to respond to many telephone calls from members of the public seeking information about the work of the Commission and about the law generally.

5. Staff Development Workshop

The annual Staff Development Workshop, held under the auspices of the Federation of Law Reform Agencies of Canada, remains the only educational opportunity specifically designed for lawyers engaged in the work of law reform. We were honoured that the 1991 Staff Development Workshop took place in Winnipeg and was organized and hosted by the Commission. Representatives from British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Canada attended this very successful event.

E. ACKNOWLEDGEMENTS

Sincere thanks are owed by the Commission to the many individuals who contributed to the success of the Manitoba Law Reform Commission during the past year. Among these are our staff and consultants who have carried out their duties with competence, skill and ability.

We also acknowledge the continuing support received from the Manitoba Law Foundation through their research grants.

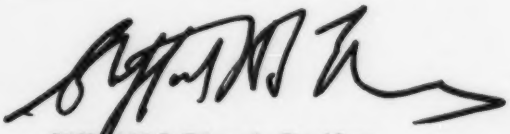
Our thanks go to the Faculty of Law, University of Manitoba, as well as the staff of the E.K. Williams Library, the Manitoba Department of Justice Legal Library Resources, the Great Library, and the Provincial Archives and Legislative Library.

[5]Manitoba Law Reform Commission, "Statutory Designations and The Retirement Plan Beneficiaries Act" (1991), 11 E. & T.J. 64.

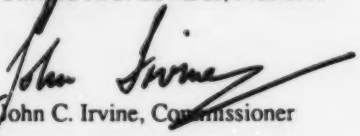
We also express our appreciation to Deputy Minister of Justice and Attorney General, Graeme Garson, Q.C., to his successor, Acting Deputy Minister of Justice and Attorney General Shirley Strutt, and to the staff of the Department.

It is our pleasure to take this opportunity to express our appreciation to the Minister of Justice and Attorney General of Manitoba, the Hon. James C. McCrae, for his continued confidence in the work of the Commission.

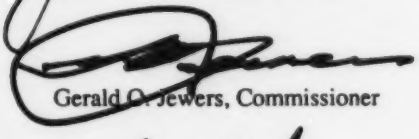
This is a Report pursuant to section 15 of *The Law Reform Commission Act*, C.C.S.M. c. L95, made as of the 31st day of March 1992.



Clifford H.C. Edwards, President

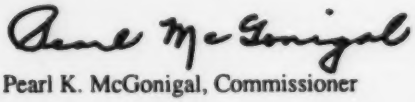


John C. Irvine, Commissioner



Gerald O. Jewers, Commissioner

Eleanor R. Dawson, Commissioner



Pearl K. McGonigal, Commissioner

APPENDIX A

THE LAW REFORM COMMISSION ACT
C.C.S.M. c. L95

CHAPTER L95

THE LAW REFORM COMMISSION ACT

(Assented to March 8, 1990)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definition
1 In this Act,

"commission" means the Manitoba Law Reform Commission continued under this Act; («Commission»)

"minister" means the Attorney General. («ministre»)

Continuation of commission
2(1) The "Manitoba Law Reform Commission", comprising the members appointed under section 3, is continued as a body corporate.

Winding up
2(2) In no case shall the affairs or the duties of the commission be wound up or altered unless the Legislature so provides.

Appointments to commission
3(1) The commission shall be composed of not less than five and not more than seven commissioners appointed by the Lieutenant Governor in Council on the recommendation of the minister,

CHAPITRE L95

LOI SUR LA COMMISSION DE RÉFORME DU DROIT

(Sanctionnée le 8 mars 1990)

SA MAJESTÉ, sur l'avis et du consentement de l'Assemblée législative du Manitoba, édicte :

Définitions
1 Les définitions qui suivent s'appliquent à la présente loi.

«Commission» La Commission de réforme du droit du Manitoba prorogée en vertu de la présente loi. ("commission")

«ministre» Le procureur général. ("minister")

Prorogation de la Commission
2(1) Est prorogée à titre de personne morale la Commission de réforme du droit du Manitoba, composée des membres nommés en vertu de l'article 3.

Cessation des fonctions
2(2) Sauf si l'Assemblée législative le prévoit, ni les activités ni les fonctions de la Commission ne peuvent cesser ni être modifiées.

Nomination à la Commission
3(1) La Commission est composée de cinq à sept commissaires nommés par le lieutenant-gouverneur en conseil sur la recommandation du ministre dont :

(a) at least one of whom shall be a judge of the Court of Queen's Bench;

(b) at least one of whom shall be a full-time member of the Faculty of Law of the University of Manitoba;

(c) at least one of whom shall be a barrister and solicitor entitled to practise in the province, and who is not in the full-time employ of the Government of Manitoba or any agency thereof; and

(d) at least one of whom is not a lawyer.

Terms of office
3(2) Subject to subsection (3), each commissioner shall hold office for a term of three years during good behaviour.

Terms of first commissioners
3(3) Two of the first commissioners appointed by the Lieutenant Governor in Council shall be appointed for a term of one year during good behaviour, a further two of the first commissioners shall be appointed to hold office for a term of two years during good behaviour, and the rest of the first commissioners so appointed shall be appointed to hold office for a term of three years during good behaviour.

Disqualification of commissioner
3(4) A commissioner is disqualified from holding office, and the office held by the commissioner is vacated, where the commissioner

(a) fails to attend three consecutive regular meetings of the commission, except where the commission by resolution excuses the absences; or

(b) in the case of a commissioner who is a barrister or solicitor, ceases to be a member in good standing of the Law Society of Manitoba; or

(c) is declared under The Mental Health Act to be mentally disordered or incapable of managing his or her affairs.

Vacancies
3(5) A vacancy among the commissioners resulting from resignation, disqualification or death before the expiry of a term of office shall be filled by an appointment for the remainder of the unexpired term.

a) au moins un juge de la Cour du Banc de la Reine;

b) au moins un membre à plein temps de la Faculté de droit de l'Université du Manitoba;

c) au moins un avocat ayant le droit de pratiquer dans la province mais ne travaillant pas à temps plein pour le gouvernement du Manitoba ou un de ses organismes;

d) au moins une personne qui n'est pas avocate.

Mandat
3(2) Sous réserve du paragraphe (3), chaque commissaire occupe son poste à titre inamovible pour trois ans.

Mandat des premiers commissaires
3(3) Parmi les premiers commissaires nommés par le lieutenant-gouverneur en conseil, deux sont nommés à titre inamovible pour des mandats d'un an, deux autres sont nommés à titre inamovible pour des mandats de deux ans et les autres commissaires sont nommés à titre inamovible pour des mandats de trois ans.

Déchéance
3(4) Est déchu de son poste le commissaire qui :

a) omet d'être présent à trois réunions consécutives régulières de la Commission, à moins que celle-ci n'excuse, par résolution, les absences;

b) étant avocat, cesse d'être un membre en règle de l'Association du Barreau du Manitoba;

c) est déclaré atteint de troubles mentaux ou incapable de gérer ses biens en vertu de la Loi sur la santé mentale.

Sur ce, le poste de ce commissaire devient vacant.

Vacances
3(5) Toute vacance qui se produit parmi les commissaires par suite d'une démission, d'une déchéance ou d'un décès avant l'expiration d'un mandat est remplie pour le reste du mandat non écoulé.

Re-appointment
3(6) A commissioner whose term of office has expired may be re-appointed.

Appointment of successors
3(7) A commissioner whose term of office expires continues to hold office until a successor is appointed.

Transitiou..l
3(8) Notwithstanding anything in this section, the persons who are members of the commission on the coming into force of this Act shall continue to hold office for the terms of their appointments and thereafter until re-appointed or replaced.

President
4 The Lieutenant Governor in Council shall appoint one of the members of the commission, who shall be a lawyer, as president of the commission.

Remuneration
5(1) The president and other members of the commission shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council.

Expenses
5(2) The president and other members of the commission may be paid such reasonable out-of-pocket expenses incurred by them in the performance of duties under this Act as may be approved by the commission.

Reduction of remuneration
5(3) In no case shall the remuneration paid to the members of the commission be reduced unless the Legislature so provides.

Duties of the commission
6 The duties of the commission are to inquire into and consider any matter relating to law in Manitoba with a view to making recommendations for the improvement, modernization and reform of law, including, without limiting the generality of the foregoing,

(a) the removal of provisions of the law that are outdated or inconsistent;

(b) the maintenance and improvement of the administration of justice;

(c) the review of judicial and quasi-judicial procedures under any Act;

Nouveau mandat
3(6) Les commissaires peuvent recevoir un nouveau mandat.

Nomination de successeurs
3(7) Le commissaire dont le mandat se termine demeure en poste jusqu'à la nomination de son successeur.

Disposition transitoire
3(8) Malgré les autres dispositions du présent article, les personnes qui sont membres de la Commission au moment de l'entrée en vigueur de la présente loi demeurent en poste pour la durée de leur mandat et par la suite jusqu'à ce qu'ils reçoivent un nouveau mandat ou soient remplacés.

Président
4 Le lieutenant-gouverneur en conseil nomme un des membres de la Commission à titre de président. Celui-ci doit être avocat.

Rémunération
5(1) Le président et les autres commissaires reçoivent la rémunération fixée par le lieutenant-gouverneur en conseil.

Frais
5(2) Le président et les autres commissaires sont indemnisés des frais raisonnables engagés dans l'exercice des fonctions qui leur sont confiées en application de la présente loi, sous réserve de l'approbation de la Commission.

Réduction de rémunération
5(3) Sauf si l'Assemblée législative le prévoit, la rémunération versée aux membres de la Commission ne peut être réduite.

Fonctions de la Commission
6 La Commission a pour fonctions de faire enquête sur les questions se rapportant au droit manitobain et de les étudier en vue de faire des recommandations pour améliorer, moderniser et réformer le droit, et notamment en vue :

a) de supprimer les dispositions du droit qui sont désuètes ou incompatibles;

b) de soutenir et d'améliorer l'administration de la justice;

c) d'examiner les procédures judiciaires et quasi-judiciaires prévues par une loi quelconque;

(d) the development of new approaches to, and new concepts of, law in keeping with and responsive to the changing needs of society and of individual members of society; and

(e) any subject referred to it by the minister.

General powers
7(1) For the purpose of managing and administering the affairs of the commission, the commissioners have, and may on behalf of the commission exercise, all the powers of the commission.

Powers of the commission
7(2) In the performance of its duties, the commission may

(a) institute and direct research, as it considers necessary, including studies and research relating to the laws and legal systems and institutions of other jurisdictions in Canada or elsewhere;

(b) receive and consider any proposals for the reform of the law that may be made or referred to it by any body or person;

(c) undertake any study pursuant to its duties as a joint project of the commission and any one or more other law reform commissions, agencies or bodies in Canada or elsewhere, and enter into such contractual or other arrangements as it considers necessary to carry out a joint project, including arrangements for the provision of personnel or other resources of the commission to any such commission, agency or body;

and may do such other things and take such other measures as the commission considers advisable for the achievement of its objects.

Priority studies
7(3) The minister may direct that the commission include any project in its program for studies and may direct that special priority be given to any project, and the commission shall be governed by any direction so made.

By-laws
8 The commission may, by by-law, regulate its proceedings and provide generally for the conduct and management of its affairs.

d) d'élaborer de nouvelles méthodes et de nouveaux concepts de droit correspondant à l'évolution des besoins de la société et des individus qui la composent;

e) de traiter tout autre sujet que le ministre lui soumet.

Pouvoirs généraux
7(1) Aux fins de la gestion des affaires internes de la Commission, les commissaires sont investis de tous les pouvoirs de celle-ci, et ils peuvent exercer ces pouvoirs en son nom.

Pouvoirs de la Commission
7(2) La Commission peut, dans l'exercice de ses fonctions :

a) entreprendre et diriger les recherches qu'elle juge nécessaires, notamment des études et des recherches relatives au droit, aux systèmes et aux institutions juridiques d'autres autorités législatives au Canada ou ailleurs;

b) recevoir et examiner toutes propositions de réforme du droit qui lui sont formulées ou transmises par un organisme ou une personne;

c) faire toute étude que ses fonctions lui permettent, à titre de projet conjoint de la Commission et d'une ou de plusieurs autres commissions, ou d'un ou de plusieurs autres organismes de réforme du droit au Canada ou ailleurs, et elle peut conclure les contrats ou les autres arrangements qu'elle juge nécessaires à la réalisation du projet conjoint, notamment des arrangements visant à fournir à une telle commission ou à un tel organisme du personnel ou d'autres moyens dont dispose la Commission.

Elle peut également accomplir tout autre acte et prendre toute autre mesure qu'elle juge indiqués pour la réalisation des ses objets.

Priorité des études
7(3) Le ministre peut ordonner à la Commission d'inclure un projet dans son programme d'études et lui ordonner d'accorder une priorité spéciale à un projet; la Commission doit respecter l'ordre qui lui a été donné.

Règlements administratifs
8 La Commission peut, par règlement administratif, régir sa procédure et prévoir de façon générale la conduite et la gestion de ses affaires internes.

Meetings
9(1) The commission shall meet at least four times in each year.

Quorum
9(2) A majority of the commission shall constitute a quorum of the commission.

Employment of staff
10(1) An executive director, and such lawyers, office staff and other employees as may be required for the commission's purposes, may be employed under The Civil Service Act.

Civil Service Acts apply
10(2) The provisions of The Civil Service Act and The Civil Service Superannuation Act, and the regulations made under those Acts, apply to persons employed under subsection (1).

Remuneration and duties of employees
11(1) The commission shall pay the salaries and remuneration of persons employed or appointed under section 10, and the commission shall prescribe their duties.

Duties of executive director
11(2) The executive director has the management, direction, control and administration of the day to day operations of the commission.

Temporary assistance
12 The commission may engage on a temporary basis or for specific projects the services of persons having technical or specialized knowledge of any matter relating to the work of the commission, to advise and assist the commission in the performance of its duties under this Act, and may fix and pay the remuneration and expenses of such persons.

Application of Civil Service Act
13(1) Notwithstanding subsection 14(3), for the purpose of applying subsection 12(4) of The Civil Service Act to persons employed under section 10, the funds of the commission shall be deemed to be part of the Consolidated Fund.

Agency of government
13(2) The commission is an agent of Her Majesty in right of Manitoba.

Réunions
9(1) La Commission tient un minimum de quatre réunions par an.

Quorum
9(2) Le quorum est constitué par la majorité des commissaires.

Personnel
10(1) Un directeur général, ainsi que les avocats, le personnel de bureau et les autres employés dont la Commission a besoin à ses fins peuvent être nommés conformément à la Loi sur la fonction publique.

Application de certaines dispositions
10(2) Les dispositions de la Loi sur la fonction publique et de la Loi sur la pension de la fonction publique ainsi que leurs règlements d'application visent les personnes nommées en vertu du paragraphe (1).

Rémunération et fonctions des employés
11(1) La Commission paie la rémunération des personnes nommées en vertu de l'article 10 et définit leurs fonctions.

Fonctions du directeur général
11(2) Le directeur général assure la gestion de la Commission.

Aide temporaire
12 La Commission peut retenir, de façon provisoire ou pour des projets déterminés, les services de personnes possédant des connaissances techniques ou spécialisées sur toute question relative à ses travaux, pour la conseiller et l'aider à remplir les fonctions que lui attribue la présente loi. Elle peut fixer et payer la rémunération et les frais de ces personnes.

Loi sur la fonction publique
13(1) Malgré le paragraphe 14(3), aux fins de l'application du paragraphe 12(4) de la Loi sur la fonction publique aux personnes employées en vertu de l'article 10, les fonds de la Commission sont réputés faire partie du Trésor.

Mandataire du gouvernement
13(2) La Commission est un mandataire de Sa Majesté du chef du Manitoba.

Funds of commission
14(1) The funds of the commission consist of moneys received from any source including, without restricting the generality of the foregoing, moneys granted to it for its use by the Legislature of Manitoba or the Manitoba Law Foundation.

Payment from Consolidated Fund
14(2) For the purposes of subsection (1), the Minister of Finance, on the requisition of the minister, may pay grants to the commission from and out of the Consolidated Fund with moneys authorized for the purpose by the Legislature.

Use of funds
14(3) The commission has charge control and management of its funds, and may disburse, expend or otherwise deal with those funds, in such manner, consistent with its objects and with this Act, as it may consider proper.

Investment
14(4) Without restricting the generality of subsection (3), the commission may invest any moneys not immediately required for its purposes in investments authorized by the Minister of Finance.

Annual report to minister
15(1) The commission shall report from time to time to the minister and shall make an annual report to the minister on the activities of the commission.

Special report to minister
15(2) When the commission reviews, considers or inquires into any matter referred to it by the minister, the commission shall make a report to the minister with respect to that matter at the conclusion of its deliberations.

Publication of reports
15(3) The commission may publish any report made under this section.

Application of Corporations Act
16 The Corporations Act does not apply to the commission.

Repeal
17 The Law Reform Commission Act, chapter L95 of the Re-enacted Statutes of Manitoba, 1987, is repealed.

Fonds de la Commission
14(1) Les fonds de la Commission sont composés des sommes reçues de toute source, y compris les sommes que l'Assemblée législative du Manitoba ou la Fondation du droit du Manitoba lui accorde.

Paiement sur le Trésor
14(2) Pour l'application du paragraphe (1), le ministre des Finances peut, à la demande du ministre, verser des subventions à la Commission sur le Trésor au moyen des sommes que l'Assemblée législative vote à cette fin.

Utilisation des fonds
14(3) La Commission a la charge, le contrôle et la gestion de ses fonds et elle peut les dépenser ou en disposer autrement de la façon, compatible avec ses objets et la présente loi, qu'elle estime indiquée.

Placements
14(4) Sans préjudice de la portée générale du paragraphe (3), la Commission peut employer les sommes dont elle n'a pas immédiatement besoin dans les placements autorisés par le ministre des Finances.

Rapport annuel
15(1) La Commission présente à l'occasion un rapport au ministre et elle lui présente en outre un rapport annuel sur ses activités.

Rapport spécial
15(2) La Commission présente au ministre un rapport sur toute question que le ministre lui soumet, après la fin de ses délibérations sur cette question.

Publication des rapports
15(3) La Commission peut publier tout rapport qu'elle présente en vertu du présent article.

Loi sur les corporations
16 La Loi sur les corporations ne s'applique pas à la Commission.

Abrogation
17 La Loi sur la Commission de réforme du droit, chapitre L95 des Lois réadoptées du Manitoba de 1987, est abrogée.

Reference in C.C.S.M.

18 This Act may be referred to as chapter L95 of the Continuing Consolidation of the Statutes of Manitoba.

Coming into force

19 This Act comes into force on royal assent.

Codification permanente

18 La présente loi est le chapitre L95 de la Codification permanente des lois du Manitoba.

Entrée en vigueur

19 La présente loi entre en vigueur le jour de sa sanction.

APPENDIX B

EXECUTIVE SUMMARIES OF REPORTS PUBLISHED DURING 1991-1992

REPORT ON SELF-DETERMINATION IN HEALTH CARE (LIVING WILLS AND HEALTH CARE PROXIES)

EXECUTIVE SUMMARY

The Manitoba Law Reform Commission's Report on *Self-Determination in Health Care (Living Wills and Health Care Proxies)* proposes a new method for the expression of wishes respecting health care: the health care directive. This new method would allow competent individuals to determine in advance the medical treatment to be administered to themselves should they later lose the capacity to make health care decisions. It would also allow them to appoint another person to make health care decisions on their behalf after they have lost the capacity to make those decisions themselves. The Report discusses why such a mechanism is needed, how it could be used, its effect and the details of implementation.

The following summarizes the major recommendations of the Report.

BACKGROUND

Competent individuals have the right to determine what is to be done to their own bodies, including what current medical treatment will or will not be administered. In general though, they lose this right of self-determination when they lose the capacity to make their own decisions about health care. At that point, individuals cannot be assured that instructions which were given by them prior to the incapacity will be followed. Furthermore, the law does not allow individuals to name others to make health care decisions on their behalf if they later lose the ability to make their own decisions. Documents which attempt to achieve those goals and which are commonly available in the United States (variously known as living wills, advance directives and durable powers of attorney for health care) are rarely accepted in Canada.

In July 1990, the Commission distributed a Discussion Paper which asked whether there was a need for reform is this area. The Discussion Paper received a very strong response and was widely circulated. Respondents indicated that a mechanism should be introduced to permit individuals to exercise control, while competent, over the medical treatment to be administered in the event of becoming incompetent. The Commission agrees that such a mechanism should be developed.

THE MECHANISM: THE HEALTH CARE DIRECTIVE

The Commission proposes that the law should recognize a new document, to be called the health care directive. Every person who has the capacity to make health care decisions for himself or herself should be able to make one. The health care directive would be used by an individual to set out his or her wishes for future medical treatment, to name another person (known as a health care proxy) to make health care decisions on his or her behalf, or both.

GIVING EFFECT TO HEALTH CARE DIRECTIVES

Coming Into Force Health care directives would become effective when the maker loses the capacity to make and communicate his or her own health care wishes and would remain effective for the duration of the incapacity. Any relevant wishes set out in the health care directive would first be given regard. If the maker's wishes in the health care directive are not relevant to the health care decision to be made or are ambiguous, the health care proxy, if one is appointed, would be authorized to make decisions. In making them, the health care proxy would be obliged to follow the maker's wishes which were expressed prior to the incapacity and, if they

are not known to him or her, the proxy would have to make decisions according to what in his or her opinion is in the best interests of the maker.

Scope The scope of health care directives would be very broad, encompassing any care, treatment, service or procedure to maintain, diagnose, treat or provide for an individual's physical or mental health or personal care. However, proxies would not be permitted to consent to *inter vivos* tissue donation, medical treatment whose primary purpose is research and non-therapeutic sterilization unless specifically authorized to do so by the maker in the health care directive.

The Health Care Directive: "As Effective As" The key to the Commission's proposals is the manner in which health care directives would be made binding. The Commission proposes that the instructions contained in the health care directive or given by the health care proxy should be as effective as the instructions which could have been given by the maker while competent. As a result, the instructions in a health care directive or given by a health care proxy to something to which a competent person cannot consent (such as euthanasia) would not be given effect. This also means that the consequences of non-compliance with a valid instruction would be the same as the consequences of non-compliance with instructions given by a competent individual: the civil law remedy of damages for battery, and professional discipline.

Protection from Liability Proposals are made to ensure that the wishes of the maker are followed and given priority over the wishes of others. For example, no person or court should be able to review a health care proxy's decision unless it can be shown that the proxy is not acting in good faith or in accordance with the maker's wishes. Those acting in good faith under the authority of a health care directive or the instructions of a health care proxy should be protected from lawsuits. Health care proxies would be protected from liability for acting in good faith in accordance with the authority conferred upon them by health care directives. However, no one would be exempt from liability for negligence in carrying out the instructions in a health care directive.

IMPLEMENTING HEALTH CARE DIRECTIVES

Execution Execution requirements for health care directives should be as simple as possible, to ensure that they are accessible to everyone who wishes to make one while recognizing the need for reliability. Therefore, they should only be required to be in writing and signed by their makers. Persons who are physically unable to execute one should be allowed to have a substitute sign on their behalf, in which case a witness should be required. The health care proxy should also show his or her willingness to accept the position by consenting to the appointment in writing.

Qualifications of Maker and Proxy Everyone with the capacity to make health care decisions should be allowed to make health care directives. To assist health care professionals who will want to know whether a health care directive is valid, the Commission proposes a presumption. In the absence of other evidence, they may assume that a person 16 years of age or older has the capacity to execute a health care directive and that a person under 16 lacks the capacity. A directive made by a person under 16 could still be given effect if there were adequate evidence that he or she had the capacity to make health care decisions when the directive was executed. Similarly, a directive made by someone 16 or older could be invalidated by evidence of lack of capacity.

Making health care decisions for someone else requires a higher level of maturity than does making one's own health care decisions and, therefore, a health care proxy should be 18 years of age or older.

Form of Health Care Directive Individuals should be able to use any form and any words which clearly express their wishes for future medical treatment. This would prevent health care directives from being invalidated for non-compliance with a mandatory form. However, suggested forms should be provided as a guide for individuals in the use of health care directives. The Report sets out two possibilities.

Revocation Individuals should be able to revoke their health care directives while they have the capacity to execute new ones. Revocation should be by new document or by physical destruction.

Onus on Maker The onus of making known the existence or revocation of a health care directive should rest on the maker. No one should be liable for not acting in accordance with the maker's wishes if he or she is not aware of the maker's health care directive or its revocation.

Implementation A draft Act setting out the Commission's recommendations is contained in the Report. The Commission also suggests that public education programmes should follow the passage of legislation authorizing health care directives and should continue on an on-going basis.

RELATIONSHIP WITH THE COMMON LAW

The common law presently recognizes some directions given in advance in respect of future medical treatment. The Commission's proposed scheme would not affect the legality of such directions, nor would it impede the courts from expanding upon them.

CONCLUSION

The introduction of health care directives should benefit patients and health care professionals. Patients would gain increased control over their lives and their health care. Health care professionals would be given a reliable method of learning their patient's wishes and, where a health care proxy is appointed, a substitute decision maker with legal authority. For many people, the health care directive will be an appropriate, effective and welcome innovation for the expression of health care wishes.

REPORT ON THE INDEPENDENCE OF JUSTICES OF THE PEACE AND MAGISTRATES

EXECUTIVE SUMMARY

The Manitoba Law Reform Commission's Report on *The Independence of Justices of the Peace and Magistrates* proposes major reforms aimed at ensuring the independence and impartiality of justices of the peace and maintaining public confidence in that office. It completes the project referred to the Manitoba Law Reform Commission by the Minister of Justice and Attorney General, James C. McCrae, that has already resulted in the Commission's 1989 Report entitled *The Independence of Provincial Judges*.

Justices of the peace and magistrates exercise a varied mix of statutory jurisdictions. While some of their duties are more administrative in nature, some duties can be quite judicial and the justice of the peace or magistrate is called upon to decide questions of liberty or security of the person or to determine guilt or innocence.

The *Canadian Charter of Rights and Freedoms* requires that a judicial officer be independent and impartial when deciding questions of liberty or security of the person and when determining guilt or innocence. These *Charter* requirements apply to justices of the peace and magistrates when they exercise those judicial functions. In addition, independence and impartiality, both in fact and in appearance, must also be maintained to preserve public confidence in our judicial system.

To protect judicial independence from the possibility of arbitrary interference by the Executive Branch of government, the Supreme Court of Canada has identified three essential conditions: security of tenure for the judicial officer, financial security for the judicial officer, and institutional independence. The presence of such judicial independence is, in turn, the central condition needed to create the fact and the appearance of impartiality.

The following summarizes some of the Report's major recommendations:

A single kind of inferior judicial officer: Currently, the separate offices of "magistrate" and "justice of the peace" carry very similar statutory jurisdictions and tend to cause confusion to officials and the public. The Commission recommends the removal of distinctions between these offices and the creation of a single inferior judicial office called "justice of the peace".

Classification by function: Justices of the peace and magistrates are granted extensive and varied statutory powers, but a lot of these powers are never actually exercised by many judicial officers. Their powers and duties are often narrowed and restricted by administrative directives. The Commission is concerned that this method leads to confusion, is not readily ascertainable by the public, and may jeopardize judicial independence.

The Commission therefore proposes that justices of the peace be statutorily classified according to the type of functions they will perform. The three classifications would be:

1) **Non-presiding justice of the peace:** powers restricted solely to receiving informations and taking oaths.

2) **Presiding justice of the peace:** has the above powers plus those duties calling for the exercise of a more significant level of discretion, like issuing subpoenas, remanding in custody, and confirming or cancelling recognizances.

3) **Senior presiding justice of the peace:** has all the above powers plus more traditionally judicial duties like adjudicating bail applications and summary conviction trials and issuing search warrants.

Appointment: Selection and appointment of justices of the peace is currently within the sole discretion of the provincial Cabinet. The Commission is concerned that this may result in the unfortunate public perception that some appointments are politically motivated or influenced, which undermines the appearance of independence and impartiality of all justices of the peace. Accordingly, the Commission proposes a new method intended to minimize that perception, to widen the process to more candidates and greater public participation and to focus the selection criteria on merit alone.

The Commission proposes a "nominating committee" method of appointment for senior presiding and presiding justices of the peace. This standing committee would consist of:

- the Chief Judge of the Provincial Court;
- another provincial judge named by the Chief Judge; and
- five non-lawyers, named by the provincial Cabinet.

The nominating committee could act by a quorum of three members. Whenever an appointment needs to be made, the nominating committee must advertise the vacancy and evaluate candidates according to established criteria. It would also be empowered to seek out appropriate candidates. Upon completing its assessment, it would submit to the Attorney General a list of not more than three names of qualified individuals. Cabinet must use this list to fill the vacancy and appoint one of the named candidates.

The current appointment process may continue to be used for non-presiding justices of the peace because their duties are solely administrative and the *Charter*'s independence requirements need not be applied.

Tenure: At present, an appointment as a justice of the peace or magistrate is held at the pleasure of the provincial Cabinet; the appointment can be ended at any time without cause. This system can continue for non-presiding justices of the peace, again because their limited jurisdiction would not attract *Charter* scrutiny. However, for presiding and senior presiding justices of the peace, the Commission recommends that office should be held during good behaviour, so that misconduct or incompetence must occur before an appointment is revoked.

Remuneration: Currently, if a justice of the peace is also a civil servant, there is no remuneration in addition to the civil service salary. If the justice of the peace is a non-civil servant, there is remuneration in the form of a small monthly retainer plus a fee for each performance of certain judicial services.

The problem with the civil service salary method is that the independence of a civil servant/justice of the peace is jeopardized in two ways. Apart from the judicial officer being too closely identified with the interests of the state employer, there is the risk that a job evaluation for the purpose of a merit increment in civil service salary could be used or appear to be used as a way to control how that civil servant/justice of the peace exercises judicial discretion.

The problem with the fee-for-service method is that any system of remuneration based on volume of work done may be perceived as encouraging judicial officers to attract more business by cooperating with police requests, again jeopardizing both independence and the appearance of impartiality.

To address these problems, the Manitoba Law Reform Commission has two recommendations. First, employees of all federal, provincial and municipal government

departments, agencies and Crown corporations should be ineligible for appointment as a justice of the peace. Secondly, all presiding and senior presiding justices of the peace should be paid according to a set of salary scales that reflect jurisdictional classification and the average estimated workload of all justices of the peace of a particular classification in similar circumstances, including geographic and demographic factors.

All issues of salaries, pensions and other benefits would be handled by the Judicial Compensation Committee, using the same process and terms of reference that already exist to review the remuneration of judges of the Provincial Court.

Discipline: The security of tenure and remuneration necessary for the independence of judicial officers requires some type of formal review process for investigating complaints against justices of the peace and for imposing disciplinary sanctions, including revocation of appointment. It is logical to use the same system that is used to discipline provincial judges, since they and justices of the peace are officers of the same court (albeit with different levels of jurisdiction and responsibility).

However, as indicated in the Commission's previous Report on *The Independence of Provincial Judges*, the current disciplinary method is flawed because the same body (the Judicial Council) acts as investigator, prosecutor and judge. In that Report, a new system was proposed that solved this problem. The Law Reform Commission recommends that this new system also be used to discipline justices of the peace.

Briefly, minor complaints would be dealt with by the Chief Judge of the Provincial Court, who would attempt to resolve the matter to the satisfaction of the complainant and the justice of the peace. Unresolved complaints and more serious complaints would go to a new body called the Judicial Inquiry Board that would be responsible for investigation and prosecution. The Board would be composed of three persons: a lawyer and a non-lawyer named by the Cabinet, and a provincial judge (other than the Chief Judge) named by the judges of the Provincial Court.

The Judicial Council would adjudicate any charges laid by the Judicial Inquiry Board. The Council would be composed of:

- the Chief Justice of Manitoba (or another judge of the Court of Appeal designated by the Chief Justice);
- the Chief Justice of the Manitoba Court of Queen's Bench (or another judge of that court designated by its Chief Justice);
- two judges of the Provincial Court, named by the judges of that court;
- the president of the Law Society of Manitoba (or designate);
- the president of the Manitoba Branch of the Canadian Bar Association (or designate);
- three non-lawyers appointed by the Cabinet; and
- when the person being disciplined is a justice of the peace, a justice of the peace named by the Cabinet on the recommendation of the minister.

After holding a hearing, the Judicial Council could take a range of disciplinary measures including reprimand, fine, suspension, or ordering a leave of absence for the purpose of treatment. It could also change a classification as a presiding or senior presiding justice of the peace. Only the Judicial Council would be able to revoke an appointment, a power currently vested in the Cabinet.

All decisions of the Judicial Council could be appealed to the Manitoba Court of Appeal.

Immunity: The Commission recommends that justices of the peace should have the same immunity from law suits as superior court judges (judges of the Court of Queen's Bench and

Court of Appeal) so that they, too, can be (and appear to be) free in thought and independent in judgment, without fear that a decision will result in personal liability.

Training: The Commission also suggests that justices of the peace receive increased training and on-going support.

REPORT ON STERILIZATION AND LEGAL INCOMPETENCE

EXECUTIVE SUMMARY

The Manitoba Law Reform Commission's Report on *Sterilization and Legal Incompetence* explores the two irreconcilable positions emanating from the complex issue of whether legally incompetent people should ever have access to or be subject to non-therapeutic sterilization when they do not have the legal capacity to choose this procedure personally by consenting. The Report does not choose between or resolve these polarizations, concluding that such an acute ideological choice is best handled directly by the Government and Legislature.

BACKGROUND

The common law in Canada used to be uncertain about whether there were any limits on the ability of parents, guardians or the courts to give substituted consent in this area. It was in the context of that legal uncertainty that this project was referred to the Manitoba Law Reform Commission in late 1980 by the then Attorney General, G.W.J. Mercier.

The project did not proceed quickly, due to such diverse factors as waiting for the Supreme Court of Canada to render its 1986 judgment in the leading Canadian precedent case of *Re Eve*, and studying the exhaustive investigation and recommendations prepared in this area in 1989 by the Alberta Institute of Law Research and Reform.

THE CURRENT LAW

No medical treatment or procedure can lawfully occur without the patient's consent. Valid consent cannot be given by a person who is legally incapable of it. Some (but not all) adults who have intellectual or mental health disabilities and most minors are legally incompetent to give consent.

In this situation, the law permits certain substitute decision-makers to give consent on behalf of the legally incompetent person. The substitute decision-maker must make the decision that is in the best interests of the person on whose behalf consent is being given.

The main authorized substitute decision-makers for minors are parents, legal guardians or the courts (under their inherent, non-statutory *parens patriae* jurisdiction). However, the authority to give substituted consent ends when the child attains the age of majority. The main authorized substitute decision-makers for adults who have intellectual or mental health disabilities are the courts (under their *parens patriae* jurisdiction) or custodians or committees of the person under *The Mental Health Act*.

The 1986 *Re Eve* decision of the Supreme Court of Canada settled the previously uncertain Canadian common law by placing a significant limitation on the legal ability of an authorized substitute decision-maker to consent to medical treatment: they cannot consent on behalf of a legally incompetent person to the performance of a non-therapeutic sterilization procedure ("sterilization" refers to any usually irreversible medical procedure that permanently terminates the ability to procreate).

Authorized substitute decision-makers continue to be able to give substituted consent where a therapeutic sterilization is involved. A "therapeutic sterilization", according to the

Supreme Court, is a sterilization performed to protect a person's physical or mental health. By contrast, a "non-therapeutic sterilization" is one performed for social reasons, like contraception or hysterectomy for menstrual management.

The blanket prohibition against non-therapeutic sterilization created by the *Eve* case does prevent any possibility of a repetition of the shameful history of routine, mass involuntary sterilization of people having intellectual disabilities. Yet the case has caused concern to some who say that this blanket prohibition can also unjustly prevent a legally incompetent person from having access to a non-therapeutic sterilization procedure in those occasional cases where it would truly be in the person's individual best interests.

The law as it now exists due to the *Eve* case could be changed by provincial legislation. A statute could give a substitute decision-maker the authority to consent to a non-therapeutic sterilization on behalf of a person legally incompetent to consent personally. Whether such a legislative response is appropriate is the central issue of this contentious area.

DISCUSSION PAPER

In November, 1990 the Commission, without advocating or recommending any legislative proposal, distributed a Discussion Paper to concerned individuals and organizations in order to elicit the opinions, judgments and concerns of the public about the issues and available options in this area. More than a dozen written briefs were received; their differing viewpoints provided invaluable assistance to the Commission in its consideration of these issues. These briefs are fairly evenly divided for and against a legislative response to *Eve*. They also illustrate the passionate convictions and polarization of viewpoints that characterize this debate.

UNIQUE NATURE OF ISSUE

All the various arguments about the central issue, contained both in the public responses and academic commentary, basically fall into one of two camps that proceed from diametrically opposed sets of underlying assumptions that share no middle ground.

A major example of these irreconcilable starting points concerns the characterization of the human rights issue posed by the question of substituted consent to sterilization. The side advocating substituted consent proceeds from the fundamental assertion that failure to ensure equal access to a beneficial procedure is discrimination and constitutes the real human rights issue at stake here. The side opposing substituted consent proceeds from the fundamental assertion that failure to ensure security of the person against unauthorized interference is discrimination and constitutes the real human rights issue.

Whichever set of underlying assumptions is adopted determines and colours all subsequent social and legal analyses by each side, including whether sterilization may be considered a benefit, whether there is a "need" for legislation to address *Eve*'s blanket prohibition, and whether the equality provisions of the *Charter of Rights and Freedoms* would be breached or affirmed by such legislation or by its absence.

Where there exist two competing but apparently equally supportable frameworks of contradictory philosophies and underlying assumptions, any choice between them can only represent a subjective ideological decision. Such an acute ideological choice is qualitatively different from the usual "social policy" questions handled by law reform commissions that simply require the making of a subjective choice or value judgment between competing legal solutions that nevertheless ultimately share the same fundamental framework of social assumptions and philosophy.

CONCLUSION

For the foregoing reasons, the Manitoba Law Reform Commission does not feel in a position under these unique circumstances to recommend a subjective ideological preference for one set of underlying assumptions and premises over the other.

While the Commission has some reservations about the rigidity of *Eve*'s absolute prohibition of substituted consent in this context, it nevertheless believes that such fundamental questions of ideology carrying profound human rights implications are best handled directly by the Government and Legislature. The mandate and moral authority of those elected and accountable bodies place them in the best position to provide an open and accessible atmosphere for the necessarily non-partisan exploration required by the two irreconcilable ideologies at issue here.

APPENDIX C

REPORTS OF THE MANITOBA LAW REFORM COMMISSION

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
#1	Jury Service for Registered Indians	April 7, 1971	An Act to Amend The Jury Act, S.M. 1971, c. 32, Royal Assent July 27, 1971
#2	Summary Disposition of Builders' and Workmen's Liens	April 13, 1971	An Act to Amend The Builders And Workmen Act, S.M. 1976, c. 22, Royal Assent June 3, 1976
#3	Disposition of Maintenance Judgments in Land Titles Offices	May 25, 1971	An Act to Amend The Judgments Act, S.M. 1972, c. 4, Royal Assent May 9, 1972
#4	An Act Respecting Billiard and Pool Rooms proposed repeal	October 19, 1971	The Statute Law Amendment Act (1974), S.M. 1974, c. 59, Royal Assent June 14, 1974 (s. 8)
#5	Recommended Right of Mortgagors to Obtain Annual Statements	October 19, 1971	An Act to Amend The Mortgage Act, S.M. 1971, c. 28, Royal Assent July 6, 1972
#6	Enactment of a Mineral Declaratory Act	December 20, 1971	The Sand and Gravel Act, S.M. 1972, c. 34, Royal Assent July 6, 1972 An Act to Amend The Mines Act S.M. 1972, c. 70, Royal Assent July 20, 1972 (s. 11) An Act to Amend The Real Property Act, S.M. 1972, c. 70, Royal Assent July 6, 1972 (ss. 15 and 16)
#7	Powers of Entry, Search and Seizure in The City of Winnipeg Act	January 24, 1972	An Act to Amend The City of Winnipeg Act S.M. 1972, c. 93, Royal Assent July 20, 1972 (ss. 26, 37, 68, 69, 89 and in part ss. 38, 39 and 63) An Act to Amend The City of Winnipeg Act, S.M. 1974, c. 73, Royal Assent June 10, 1974 (ss. 8, 11, 23-26, 28-35, 38, 97 and 98)

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
1A	Auto Engine Numbers in Section 11 of The Bills of Sales Act	May 11, 1971	The Statute Law Amendment Act, S.M. 1972, c. 81, Royal Assent July 20, 1972 (s. 3)
1B	(a) Prospect of Mortgagors' Relief from Provisions of Section 20(6) of The Mortgage Act	December 29, 1971	(change not recommended)
	(b)Right to Have Mortgage Discharged Upon Payment in Full After Five Years	December 29, 1971	An Act to Amend The Real Property Act, S.M. 1972, c. 37, Royal Assent July 6, 1972 (s. 103(1))
1C	Amending provisions as to costs in Part II of The County Courts Act to avoid inconsistency with intent of this new legislation	January 12, 1972	An Act to Amend The County Courts Act, S.M. 1972, c. 38, Royal Assent July 6, 1972
First Annual Report		March 13, 1972	(not applicable)
#8	Section 45 of the Offenses Against the Person Act, 1861	July 27, 1972	An Act to Amend The Tortfeasors and Contributory Negligence Act, S.M. 1973, c. 13, Royal Assent May 25, 1973
#9	A Review of The Privacy Act with proposed amendments to the Criminal Code of Canada	September 11, 1972	(change not recommended)
#10	The Abolition of Interspousal Immunity in Tort	December 19, 1972	An Act to Amend The Married Women's Property Act, S.M. 1973, c. 12; An Act to Amend The Tortfeasors and Contributory Negligence Act, S.M. 1973, c. 13; An Act to Amend The Criminal Injuries Compensation Act, S.M. 1973, c. 23, Royal Assent May 25, 1973
2A	Comments on draft Bill to Amend The Jury Act	April 21, 1972	An Act to Amend The Jury Act, S.M. 1972, c. 56, Royal Assent July 11, 1972 (in part)
2B	Relaxation of Limit of Number of Trustees under The Trustee Act	June 22, 1972	An Act to Amend The Trustee Act, S.M. 1972, c. 60, Royal Assent July 11, 1972

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
2C	Uniformity of Definition of Age as between The Age of Majority Act (Man.) and the Criminal Code and the Interpretation Act (Can.)	August 14, 1972	(not applicable for provincial amendment)
2D	Automatic Attachment of Wages for Maintenance Orders	November 27, 1972	An Act to Amend The Garnishment Act, S.M. 1974, c. 8, Royal Assent June 10, 1974
Second Annual Report		March 20, 1973	(not applicable)
#11	The Advisability of a Good Samaritan Law	March 8, 1973	(change not recommended)
#12	Section 110 of The Real Property Act - the immortal Manitoba mortgage	April 11, 1973	An Act to Amend The Real Property Act, S.M. 1974, c. 44, Royal Assent June 10, 1974
#13	Pre-licensing Education for Real Estate Agents in Manitoba	December 3, 1973	An Act to Amend The Real Estate Brokers Act, S.M. 1975, c. 23, Royal Assent June 19, 1975
#14	Special Enduring Powers of Attorney	January 8, 1974	The Powers of Attorney Act, S.M. 1980, c. 4, Royal Assent July 9, 1980 (in part)
#15	Administration of Justice Part I - Control of Post-arrest/pre-trial detention	February 26, 1974	Administration of the Public Safety Building in Winnipeg assumed by the Province of Manitoba, effective October 1, 1977; now called The Winnipeg Remand Centre.
3A	Conferring of matrimonial jurisdiction upon a County Court Judge as a local Judge of The Queen's Bench within the Eastern Judicial District	March 30, 1973	An Act to Amend The Queen's Bench Act, S.M. 1978, c. 28, Royal Assent July 20, 1978
3B	Correcting recent error in s. 51 of The Queen's Bench Act	September 26, 1973	An Act to Amend The Queen's Bench Act, S.M. 1974, c. 15, Royal Assent June 10, 1974

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
3C	Conferring jurisdiction to extend time for payment of fines upon provincial judges other than those who imposed such fines	October 16, 1973	(not applicable for provincial enactment)
3D	Up-dating index to Statutes of Manitoba	October 23, 1973	Indexing commenced; computer search of statutes now available
3E	Repeal of Section 212 of The Liquor Control Act	December 19, 1973	Substantial acceptance under s. 16 of an Act to Amend The Liquor Control Act, S.M. 1974, c. 63, Royal Assent June 14, 1974
Third Annual Report		April, 1974	(not applicable)
#16	Definition of Death	May 6, 1974	An Act to Amend The Vital Statistics Act, S.M. 1975, c. 5, Royal Assent June 19, 1975
#17	An International Form of Wills for Manitobans	May 6, 1974	An Act to Amend The Wills Act, S.M. 1975, c. 6, Royal Assent June 19, 1975
#18	The Rule in Saunders v. Vautier	January 8, 1975	An Act to Amend The Trustee Act, S.M. 1982-83-84, c. 38, Royal Assent August 18, 1983 (s. 4)
#19	The Administration of Justice in Manitoba Part II - Review of The Jury System	February 11, 1975	An Act to Amend The Jury Act, S.M. 1977, c. 18, Royal Assent June 18, 1977 (in part)
4A	Interprovincial Subpoenas	January 27, 1975	The Interprovincial Subpoena Act, S.M. 1975, c. 3, Royal Assent June 19, 1975
4B	Enforcement of Custody Orders	January 27, 1975	The Extra-Provincial Custody Orders Enforcement Act, S.M. 1975, c. 4, Royal Assent June 19, 1975
4C	Statutory Sums	February 11, 1975	Various amendments to Manitoba Statutes (in part)
Fourth Annual Report		April, 1975	(not applicable)

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
#20	The Highway Traffic Act	June 16, 1975	An Act to Amend The Highway Traffic Act, S.M. 1977, c. 34, Royal Assent June 18, 1977 (in part) An Act to Amend The Highway Traffic Act and The Tortfeasors and Contributory Negligence Act, S.M. 1980, c. 19, Royal Assent July 9, 1980
#21	The Administration of Justice in Manitoba Part III - Consolidation of Extra-Provincial Judgment Enforcement	January 28, 1976	-
#22	Some Aspects of Fire Insurance Legislation in Manitoba	February 9, 1976	An Act to amend The Insurance Act, S.M. 1982, c. 11,, Royal Assent May 25, 1982 (s. 1) (in part)
#23	Family Law - Part I The Support of Obligation	February 27, 1976	The Family Maintenance Act, S.M. 1978, c. 25, Royal Assent July 20, 1978 (in part)
#24	Family Law - Part II Property Disposition	February 27, 1976	An Act to Amend The Gift Tax Act (Manitoba) and The Succession Duty Act (Manitoba), S.M. 1977, (2nd Session), c. 2, Royal Assent December 12, 1977 The Marital Property Act, S.M. 1978, c. 24, Royal Assent July 20, 1978 (in part) An Act to Amend various Acts relating to Marital Property, S.M. 1978, c. 27, Royal Assent July 20, 1978 (in part) An Act to Amend The Wills Act, S.M. 1980, c. 7, Royal Assent July 9, 1980
5A	Limitation of Actions for the taking away, conversion or detention of chattels	May 26, 1975	An Act to Amend The Fatal Accidents Act and Limitation of Actions Act, S.M. 1976, c. 41, Royal Assent June 11, 1976 (ss. 2-4)
Fifth Annual Report		March 29, 1976	(not applicable)

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
#25	The Case for a Provincial Bill of Rights	May 19, 1976	-
#26	Revision of Birth Certificates of Trans-sexual persons	September 13, 1976	The Vital Statistics Act, S.M. 1982-83-84, c. 58, Royal Assent August 18, 1983
Sixth Annual Report		March 14, 1977	(not applicable)
7A	The Local Authorities Election Act	May 31, 1977	An Act to Amend The Local Authorities Election Act, S.M. 1980, c. 48, Royal Assent July 29, 1980
Seventh Annual Report		March 1, 1978	(not applicable)
#27	Limitation of Actions: Time Extensions for Children, Disabled Persons and Others	January 8, 1979	An Act to Amend The Limitation of Actions Act, S.M. 1980, c. 28, Royal Assent July 29, 1980
#28	Enforcement of Judgments Part I: Exemptions under The Garnishment Act	January 8, 1979	An Act to Amend The Garnishment Act, S.M. 1979, c. 8, Royal Assent May 11, 1979
#29	Emergency Apprehension, Admissions and Rights of Patients under The Mental Health Act	February 12, 1979	An Act to Amend The Mental Health Act, S.M. 1980, c. 62, Royal Assent July 29, 1980 (in part)
#30	Confidentiality of Adoption Records	February 12, 1979	An Act to Amend The Child Welfare Act, S.M. 1979, c. 22, Royal Assent June 15, 1979 (s. 60) An Act to Amend The Child Welfare Act, S.M. 1980, c. 41, Royal Assent July 29, 1980 Establishment of a Post-adoption Registry
8A	Section 5(1) of The Social Allowances Act	March 30, 1978	The Statute Law Amendment Act (1984), S.M. 1984, c. 17, s. 29
Eighth Annual Report		February 12, 1979	(not applicable)
#31	Political Financing and Election Expenses	August 13, 1979	The Elections Finances Act, S.M. 1980, c. 68, Royal Assent July 29, 1980

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
#32	Mechanics' Liens Legislation	August 13, 1979	The Builders' Liens Act, S.M. 1980-81, c. 7, Royal Assent May 26, 1981
#33	Enforcement of Revenue Statutes	August 13, 1979	The Charter Compliance Statute Amendment Act, S.M. 1985, c. 50, Royal Assent July 11, 1985 (in part)
#34	Enforcement of Judgments Part III: Exemptions under the Executions Act	October 22, 1979	An Act to Amend The Executions Act, S.M. 1980, c. 55, Royal Assent July 29, 1980
#35	Estate Claims for Loss of Expectation of Life	October 22, 1979	An Act to Amend The Fatal Accidents Act and The Trustee Act, S.M. 1980, c. 5, Royal Assent July 9, 1980
#36	Improved Methods of Enforcing Support Orders Against Real Property	November 19, 1979	The Family Law Amendment Act, S.M. 1980, c. 54, Royal Assent July 19, 1980 (in part)
#37	Systems of Voter Registration	November 26, 1979	The Elections Act, S.M. 1980, c. 67, Royal Assent July 29, 1980
#38	The One Year Rule for Enforcement of Arrears in Maintenance	January 21, 1980	An Act to Amend The Family Maintenance Act and The Queen's Bench Act, S.M. 1980, c. 21, Royal Assent July 9, 1980
9A	The Fire Departments Arbitration Act	April 17, 1979	An Act to Amend The Fire Departments Arbitration Act, S.M. 1980, c. 27, Royal Assent July 29, 1980
9B	Section 7 of The Payment of Wages Act	August 15, 1979	An Act to Amend The Payment of Wages Act, S.M. 1980, c. 57, Royal Assent July 29, 1980 (in part)
9C	The Seduction Act	October 22, 1979	The Equality of Status Act, S.M. 1982, c. 10, Royal Assent May 25, 1982
9D	Section 9 of The Manitoba Evidence Act	November 6, 1979	An Act to Amend The Manitoba Evidence Act, S.M. 1980, c. 26, Royal Assent July 19, 1980
9E	The Wills Act and Ademption	November 20, 1979	An Act to Amend The Wills Act, S.M. 1980, c. 7, Royal Assent July 9, 1980
9F	The term "illegitimate"	December 4, 1979	(change not recommended)
Ninth Annual Report		February 25, 1980	(not applicable)

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
#39	Controverted Elections	April 21, 1980	-
#40	Enforcement of Judgments Part II: Exemptions under The Judgments Act	April 21, 1980	-
#41	The Statute of Frauds	August 11, 1980	An Act to repeal the Statute of Frauds, S.M. 1982-83-84, c. 34, Royal Assent August 18, 1983
#42	Occupiers' Liability	August 11, 1980	The Occupiers' Liability Act, S.M. 1982-83-84, c. 29, Royal Assent August 18, 1983; The Statute Law Amendment Act (1984), S.M. 1984, c. 17, Royal Assent June 29, 1984 (s. 28)
#43	The Wills Act and the Doctrine of Substantial Compliance	September 8, 1980	The Wills Act, S.M. 1982-83-84, c. 31, Royal Assent August 18, 1983
#44	The General Register	September 22, 1980	The Real Property Act and Various Other Acts Amendment Act, S.M. 1987, c. 27, Royal Assent July 17, 1987
#45	Simplified Mortgage	December 15, 1980	(legislative amendment not required)
10A	Municipal Assessment of Personal Property	February 26, 1980	(referred to Special Committee)
10B	The Marriage Settlement Act	October 9, 1980	The Statute Law Amendment Act, S.M. 1980-81, c. 26, Royal Assent May 26, 1981 (s. 22)
Tenth Annual Report		February 16, 1981	(not applicable)
#46	Conflict of Interest of Municipal Councillors	January 4, 1982	The Municipal Conflict of Interest Act, S.M. 1982-83-84, c. 44, Royal Assent August 18, 1983
#47	Prejudgment Compensation on Money Awards: Alternatives to Interest	January 4, 1982	The Judgment Interest and Discount Act, S.M. 1986, c. 39, Royal Assent Sept. 10, 1986 (implemented in principle) (now contained in Part XIV of The Court of Queen's Bench Act)

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
#48	Prescriptive Easements and Profits-à-prendre	January 18, 1982	-
#49	The Rules Against Accumulations and Perpetuities	February 12, 1982	The Perpetuities and Accumulations Act, S.M. 1982-83-84, c. 43, Royal Assent August 18, 1983
#50	Investment Provisions under The Trustee Act	February 12, 1982	An Act to Amend The Trustee Act, S.M. 1982-83-84, c. 38, Royal Assent August 18, 1983
11A	Parents' Maintenance Legislation	March 3, 1981	-
11B	Provincial Offences Procedures	June 29, 1981	An Act to Amend The Summary Convictions Act, S.M. 1982, c. 24, Royal Assent June 30, 1982
11C	The Remembrance Day Act	January 28, 1982	-
Eleventh Annual Report		February 14, 1982	(not applicable)
#51	The Survivorship Act	September 7, 1982	The Survivorship Act, S.M. 1982-83-84, c. 28, Royal Assent August 18, 1983
#52	Structure of the Courts, Part I: Amalgamation of the Court of Queen's Bench and the County Courts of Manitoba	October 25, 1982	An Act to amend The Queen's Bench Act and to repeal The County Courts Act, The Surrogate Courts Act and The County Court Judges' Criminal Courts Act and to amend The Municipal Boundaries Act, S.M. 1982-83-84, c. 82, Royal Assent August 18, 1983 The Court of Queen's Bench Small Claims Practices Act, S.M. 1982-83-84, c. 83, Royal Assent August 18, 1983 The Court of Queen's Bench Surrogate Practice Act, S.M. 1982-83-84, c. 84, Royal Assent August 18, 1983 An Act to amend Various Acts of the Legislature to facilitate the Reorganization and Expansion of the Court of Queen's Bench, S.M. 1982-

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
			83-84, c. 85, Royal Assent August 18, 1983
#53	The Law of Domicile	December 1, 1982	The Domicile and Habitual Residence Act, S.M. 1982-83-84, c. 80, Royal Assent August 18, 1983
#54	Certificate of Lis Pendens	February 1, 1983	The Court of Queen's Bench Act, S.M. 1988-89, c. 4, Royal Assent November 16, 1988 (s. 58)
#55	Structure of the Courts, Part II: The Adjudication of Smaller Claims	March 7, 1983	The Statute Law Amendment Act (1985), S.M. 1985, c. 51, Royal Assent July 11, 1985 (in part)
Twelfth Annual Report		April 11, 1983	(not applicable)
#56	Medical Privilege	October 4, 1983	-
#57	Uniform Sale of Goods Act	November 1, 1983	-
Thirteenth Annual Report		April 2, 1984	(not applicable)
#58	Administrative Law; Part I: Procedures of Provincial Government Agencies	June 29, 1984	(legislative amendment not required); implementation, in part, through governmental policy
#59	Breach of Promise to Marry	October 1, 1984	The Family Law Amendment Act, S.M. 1987, c. 21, Royal Assent July 17, 1987
#60	An Examination of The Dower Act	November 19, 1984	-
#61	Intestate Succession	March 25, 1985	The Intestate Succession and Consequential Amendments Act, S.M. 1989-90, c. 43
14A	Jactitation of Marriage	October 5, 1984	The Family Law Amendment Act, S.M. 1987, c. 21, Royal Assent July 17, 1987
Fourteenth Annual Report		April 2, 1985	(not applicable)

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
#62	Small Projects 1) Section 6 of The Mercantile Law Amendment Act 2) The Rule in Shelley's Case 3) Permissive and Equitable Waste	October 7, 1985	-
#63	The Testators Family Maintenance Act	December 16, 1985	The Dependants Relief Act, S.M. 1989-90, c. 42
#64	The Married Women's Property Act and Related Matters	December 16, 1985	-
#65	Section 83 of The Queen's Bench Act	March 31, 1986	The Statute Law Amendment Act (1986), S.M. 1986-87, c. 19, Royal Assent September 10, 1986 (s. 12)
#66	The Human Tissue Act	March 31, 1986	The Human Tissue Act, S.M. 1987, c. 39, Royal Assent July 17, 1987; The Human Tissue Amendment Act, S.M. 1989-90, c. 28 An Act to Amend The Anatomy Act, S.M. 1987, c. 57, Royal Assent July 17, 1987
15A	Section 300 of The Liquor Control Act	June 17, 1985	-
Fifteenth Annual Report		May 6, 1986	(not applicable)
#67	Sections 33 and 34 of The Wills Act	June 16, 1986	The Statute Law Amendment Act (1987), S.M. 1987, c. 66, Royal Assent July 17, 1987 (s. 25); The Wills Amendment Act, S.M. 1989-90, c. 44
#68	Periodic Payment of Damages	March 31, 1987	-
#69	Administrative Law, Part II: Judicial Review of Administrative Action	March 31, 1987	-

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
Sixteenth Annual Report		April 13, 1987	(not applicable)
17A	The Wages Recovery Act	September 9, 1987	-
Seventeenth Annual Report		September 14, 1988	(not applicable)
#70	The Manitoba Law Reform Commission: A Framework for the Future	November 23, 1988	The Law Reform Commission Act, S.M. 1989-90, c. 25
#71	The Bulk Sales Act	December 21, 1988	-
Eighteenth Annual Report		August 8, 1989	(not applicable)
#72	The Independence of Provincial Judges	June 28, 1989	The Provincial Court Amendment Act, S.M. 1989-90, c. 34
Nineteenth Annual Report		May 15, 1990	(not applicable)
#73	Statutory Designations and The Retirement Plan Beneficiaries Act	October 23, 1990	-
20A	Limitation of Actions Brought by the Crown	September 27, 1990	-
20B	Replevin and the Need for Prior Possession	January 28, 1991	(change not recommended)
Twentieth Annual Report		March 31, 1991	(not applicable)
#74	Self-Determination in Health Care (Living Wills and Health Care Proxies	June, 1991	-
#75	The Independence of Justices of the Peace and Magistrates	August, 1991	-
#76	Sterilization and Legal Incompetence	January 27, 1992	(change not recommended)